



Comptroller General
of the United States

Washington, D.C. 20548

145208
Seldin

Decision

Matter of: Sanco Leasing Corporation

File: B-244992

Date: October 25, 1991

DECISION

Sanco Leasing Corporation asks that we review a Navy determination that the firm is not a financing institution within the meaning of the Assignment of Claims Act, 31 U.S.C. § 3727, for purposes of assigning proceeds under a contract with Superior Services to provide refuse collection services. For the reasons given below, we agree with the Navy.

Superior Services entered into the Navy contract on September 28, 1990, as a follow-on contract to contracts executed in 1984 and 1988 for the same purpose. The record shows that in 1987 and 1988 Superior Services entered into two 4-year lease/purchase agreements with Sanco Leasing for refuse collection and disposal equipment; this equipment evidently was needed to perform the contracted services. The agreements provided that title to the equipment vested in Superior Services upon delivery, subject to Sanco Leasing retaining a purchase money security interest. At the end of each lease term, Superior Services acquired full title to the equipment without paying additional consideration.

Sanco Leasing bought the equipment in issue from its parent, Sanco Corporation, of which Sanco Leasing is a wholly-owned subsidiary. In this regard, Sanco Leasing's Articles of Incorporation indicate that its principal corporate purpose is to lease and generally deal with equipment and personal property of every type, either on its own account or as an agent of others, as well as to engage in other businesses that could add to the profits of its leasing business.

In May 1991 Sanco Leasing asked the Navy to approve the assignment of any further proceeds due the contractor. In this respect, the Assignment of Claims Act generally bars all voluntary assignments of claims against the government unless the assignment is to a bank, trust or financing institution. In support of its request, Sanco Leasing relied on a decision of our Office, Alanthus Peripherals,

Inc., 54 Comp. Gen. 80 (1974), in which we held that a company that purchased equipment that small computer firms leased to the government qualified as a financing institution for purposes of assigning the government's lease payments.

The Navy responded that in its view Sanco Leasing was not a financing institution, and that the agreements with Superior Services really were installment contracts. The Navy, distinguishing Alanthus Peripherals, concluded that any financing provided by Sanco Leasing to Superior Services was merely incident to installment sales contracts.

We agree with the Navy. The exception in the Assignment of Claims Act for banks, trusts or financing institutions was intended to make it easier for government contractors, particularly small businesses, to secure financing for carrying out obligations to the government, so that government contracts could be speedily and effectively performed. Alanthus Peripherals, at 80, 82; B-200603, Nov. 4, 1980. In interpreting the financing institution exception, we have generally held that assignments are proper where the assignee deals in money rather than other commodities as a primary business activity. An ordinary business corporation that incidentally provides financing to its suppliers is not a proper assignee under the Act. Alanthus Peripherals, at 82-83.

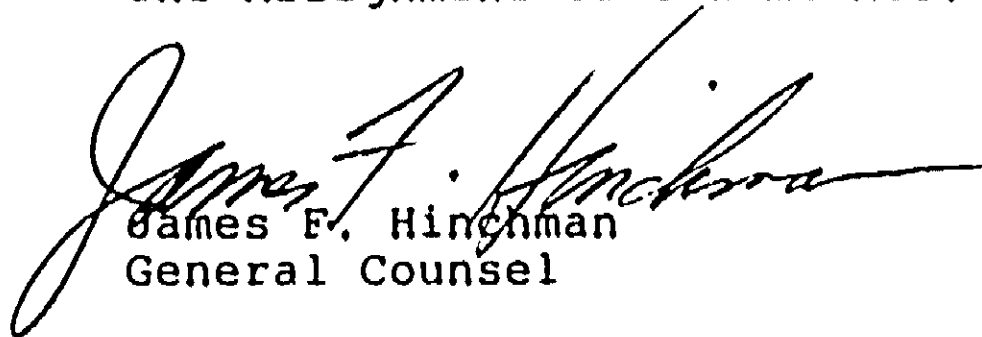
In Alanthus Peripherals we pointed out that the funding to the lessor actually resulted from the sale to Alanthus of the subject matter underlying the lease. We also discussed the peculiar circumstances of the peripheral-equipment industry, where intense competition had led to a rapid rate of technical innovation and obsolescence, so that equipment users normally did not purchase equipment but preferred instead to conclude short-term leases with equipment manufacturers. We noted that newly developing manufacturers could not afford to enter into these leases because of the expenses and undesirable accounting ramifications, and that the problem was resolved by firms such as Alanthus Peripherals. We stated:

"In view of the unique circumstances of the peripheral equipment industry . . . the instant arrangement should be recognized as providing lease financing which significantly contributes to the performance of Government contracts and that this type of lease financing operation is more than an incidental function of such lease financing companies. . . ."

The case thus does not support a finding that Sanco Leasing should be considered a financing institution. The facts indicate that Sanco Leasing generally purchases equipment

from its parent, Sanco Corporation, and enters into lease-purchase arrangements with companies like Superior Services. We agree with the Navy that unlike the Alanthus Peripherals' arrangement with the lessor the arrangement here essentially constitutes an installment sale. Also, there has been no suggestion that the refuse equipment industry shares the qualities of the peripheral equipment industry which rendered essential the activities of companies like Alanthus Peripherals. Finally, as noted above, Sanco Leasing's Articles of Incorporation indicate that leasing is its primary business activity, and do not mention financing as a business purpose.

In sum, we agree with the Navy that the assignment by Superior Services to Sanco Leasing of the proceeds of the Navy refuse-collection contract would not be proper under the Assignment of Claims Act.


James F. Hinchman
General Counsel